

JUDGE PHILIP MARTINEZ

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
2015 SEP 29 PM 3:19
U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY MC
DEPUTY

CIRK TEK, LLC,

Plaintiff,

v.

ONG INVESTMENTS, LC,

Defendant.

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Case No.

EP 15 CV 0290

COMPLAINT FOR DECLARATORY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Now Comes, CIRK TEK, LLC, by and through its attorney of record, R. Wayne Pritchard, P.E., of the law firm R. Wayne Pritchard, P.C., complaining of ONG INVESTMENTS, LC, Defendant, and for cause of action would respectfully show the court as follows:

**I.
JURISDICTION**

1. Plaintiff is a limited liability company duly formed and existing pursuant to the laws of the State of Texas.

2. ONG INVESTMENTS, LC ("ONG") is believed to be a limited liability company formed and existing pursuant to the laws of the State of Utah, which may be served through its registered agent, Miles P. Jensen, 130 S. Main Street, Suite 200, Logan, Utah 84321.

3. Venue is proper in the Western District of Texas pursuant to 28 U.S.C. §1391.

4. Upon information and belief, ONG advertises, markets and sells socks using the name +MD or PlusMd throughout the United States including Texas. Additionally, ONG sells these socks through several on line retailers to include itself, plusmd.com, as well as Footsmart.com, amazon.com, drugstore.com and Walgreens.com. Walgreens in fact operates multiple retail locations in the State of Texas. Based upon the foregoing, ONG has committed acts constituting doing business within the State of Texas pursuant to Section 17.042 of the Texas Civil Practice and

Remedies Code. Subject matter jurisdiction in this case exists pursuant to 28 U.S.C. §2201, the Federal Declaratory Judgment Act as well as under the Federal Lanham Act, 15 U.S.C. §1051, et seq.

5. All conditions precedent to the bringing of this action have occurred or taken place.

**II.
STATEMENT OF FACTS**

6. Defendant, ONG INVESTMENTS, LC, has instituted an action in Utah District Court, case number 2:15-cv-00368-TC, against JOSEPH B. FURLONG and RADWORKERS, INC., alleging that the mark MDSOX infringes a mark owned by it, +MD. Plaintiff, CIRK TEK, LLC and not JOSEPH B. FURLONG or RADWORKERS, INC., is the sole and exclusive user of the mark MDSOX.

7. The mark, MDSOX, exclusively used by Plaintiff, is registered with the United States Trademark Office, Registration No. 4611651, Registration Date 09/30/2014.

8. Defendant's mark +MD is also registered with the United States Trademark Office.

9. There is no likelihood of confusion between the respective marks of Plaintiff and Defendant as impliedly found by the United States Trademark Office by virtue of the fact that they have allowed both to be registered.

**III.
COUNT 1**

10. There is a substantial and continuing controversy between Plaintiff and Defendant and a declaration that the mark MDSOX does not infringe the mark +MD is necessary.

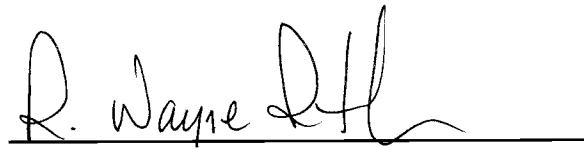
WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that it Defendant be cited to appear and answer herein and that upon final trial, Plaintiff have judgment declaring that the mark MDSOX does not infringe the mark +MD and furthermore that manufacture, marketing, use, offer for sale of socks using the MDSOX mark has not and will not infringe the +MD mark. Plaintiff further prays

for its costs, expenses and reasonable attorneys' fees and such other and further relief to which it is entitled.

Respectfully submitted,

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By:

A handwritten signature in black ink, appearing to read "R. Wayne Pritchard", is written over a horizontal line.

R. WAYNE PRITCHARD
State Bar No. 16340150

ATTORNEYS FOR PLAINTIFF